

## Pennsylvania Supreme Court to Determine if “Motive of Self-Interest or Ill-Will” is Required to Establish a Claim for Insurance Bad Faith

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**SUMMARY**

In Pennsylvania, an insurance bad faith claim requires an insured to show by clear and convincing evidence that the insurer 1) lacked a reasonable basis for denying benefits under the policy, and 2) knew or recklessly disregarded its lack of a reasonable basis in denying the claim. *Terletsky v. Prudential Prop. & Cas. Ins. Co.* On August 30, 2016, the Pennsylvania Supreme Court granted review in the case of *Rancosky v. Washington Nat'l Ins. Co.* (28 WAP 2016) to determine whether the requirements in *Terletsky* should be ratified, and if so, whether “motive of self-interest or ill-will” is a discretionary or mandatory element of an insurance bad faith claim.

In the underlying action, Rancosky obtained a \$31,144 jury verdict on her breach of contract action based on a cancer policy issued by Conseco Health. The trial court had bifurcated her insurance bad faith claim under 42 Pa. C.S.A. § 8371, and following a four-day bench trial entered a verdict in favor of Conseco Health on the bad faith claim. The trial court determined that Rancosky failed to prove that Conseco Health lacked a reasonable basis for denying benefits, basing that determination in part on a finding that Rancosky failed to prove that Conseco Health had a “dishonest purpose” or “motive of self-interest or ill-will.” Rancosky appealed the adverse judgment on her bad faith claim.

The Pennsylvania Superior Court vacated the decision on the bad faith claim and remanded the claim for a new trial. The Superior Court ruled that the trial court misapplied the law by considering evidence of motive of self-interest or ill-will as relative to the first *Terletsky* prong. The Court found that Conseco Health did lack a reasonable basis for denying benefits. The Superior Court further reasoned that evidence of self-interest or ill-will may be probative of the second *Terletsky* prong, but is not determinative of it, and remanded the matter to the trial court, ostensibly for a trial only on the second prong.

By granting review, the Pennsylvania Supreme Court may offer guidance on the standard for proving what it means that an insurer “knew or recklessly disregarded its lack of a reasonable basis in denying a claim.” The Pennsylvania Supreme Court has seen significant turnover in recent years, and this case also promises to provide some insight into the newly composed court’s broader view of insur-

ance bad faith. As always, Saul Ewing's Bad Faith Sentinel blog will keep readers apprised of cutting edge developments in the field of insurance bad faith.

The Superior Court's Rancosky opinion is available at <http://tinyurl.com/rancoskyopinion>.

For more information on how this development may affect your business, please contact the authors or the attorney at the firm with whom you are regularly in contact.

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